Supreme Court, U.S.
FILED

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NO. 99 152 JUL 22 1999

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1999

EARLENE POLYAK — Petitioner

vs

THE HONORABLE CHARLES BURSON; FRANK HULEN ESTATE; DORA LEE HULEN; WILMA LESNANSKY; THE HONORABLE JIM HAMILTON, CIRCUIT AND CHANCERY JUDGE; GERALD WILSON, CIRCUIT COURT CLERK; DALTON A. MOUNGER; and GENEVA FRISBEE, CLERK AND MASTER, — Respondents

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On Petition for Writ of Certiorari
To The United States Court of Appeals
And The United States District Court
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1.Is the Court of Appeals Sixth Circuit denial of right of appeal on res judicata, on District Court dismissal on res judicata, without state court ever granting constitutional right jury trial before sale of right investment and interest in investment at public auction in violation of the Seventh, Fifth and Fourteenth Amendments, and injunction against pro se filing in all District Court in the Sixth Circuit in violation of the constitution,and pro se civil rights?

2.Does the Court of Appeals denial of right of appeal of dismissals without constitutional right of jury trial in District Court or state court misrepresent fact of no final order and no res judicata?

3. Is Sixth Circuit denial of appeal of District Court jurisdiction over state court in violation of Article III Sec. 2, ?

3. Is Court of Appeals denial of jurisdiction of constitutional question over state court in violation of the Erie Doctrine?

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IN THE
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EARLENE POLYAK — Petitioner

vs

THE HONORABLE CHARLES BURSON et al., — Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals
And The United States District Court
For The Sixth Circuit

Petitioner prays for a Writ of Certiorari to issue from this Supreme Court to review the violation of Constitutional Rights and Laws in the sale of property without ever granting a jury trial as provided in the Seventh, and violation of due process in "taking "without any just compensation as provided in the Fifth, and the violation of due process pursuant to Partition in Kind 29-27-117 TCA and equal treatment provided in the Fourteenth, and the violation of the right to travel in Lawrence, County, Tennessee as provided in the First Amendments to the Constitution of the United States.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Sixth Circuit are set forth in Appendix A, and the opinions for the United States District Court, Middle District of Tennessee are set forth in Appendix B. The opinions of the Chancery and Circuit Courts of Lawrence County, Tennessee are set forth in Appendix C.

JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit denying Writ of Mandamus 28 U.S.C. 1651(a) to the United States District Court to stay Report and Recommendation of Magistrate Judge for constitutional right of a jury trial before investment in retirement home, and interests in investment sold on order from State Court Judge at public auction was denied on February 9, 1999.

The Petition for Rehearing denial of order was entered on March 5, 1999. The Report and Recommendation was issued on December 28,1998, and the order dismissing Complaint and Jury

Trial Demand was filed on March , 1999, in the United States District Court Middle District of Tennessee.

This Court has jruisdiction to review these orders in Petition for Writ of Certiorari within ninety days.

The jurisdiction of this Supreme Court is invoked in Article III, Sec. 2. which states that all judicial power shall extend to all cases of law and equity, between state and citizens of another state; between citizens of different states.

This jurisdiction is further invoked in 28 U.S.C. 2101(f);1441(1)(2),42 U.S.C. 1981, 1982, 1983, Civil Rights Act 1964 and 1991, First, Fifth, Seventh, and Fourteenth Amendments.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the First Amendment provides as follows:

> Congress shall make no law ...abridging the freedom of speech... and to petition the government for redress of grievances.

U.S. Const. Amen I.

The pertinent portions of Fifth Amend-

amend provided as follows:

> No...person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Amend. V

The pertinent portion of the Seventh

Amendment provides:

> ...where th value in controversy shall exceed twenty dollars, the right to a jury trial shall be preserved.

U.S. Const. Amen. VII.

The pertinent portion of the Fourteenth

Amendment provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;Nor shall any state deprive any person of life, liberty, or property without due process of law.

U.S. Const. Amen. XIV.

28 U.S.C. 1443:

> Any of the following commenced in a state Court may be removed by defendant to district court.
>
> (1) Against any person who is denied or cannot enforce in the courts of such state a law providing for equal civil rights of citizens of the United States.
>
> (2) For any act under the color of authority deprived from any law providing

for equal rights.

42 U.S.C. 1981:

> All persons within the jurisdiction of the United shall have the same right to sue...to the full and equal benefits of all laws.

42 U.S.C. 1982:

> All persons of the United States shall have right in every state... to inherit, purchase lease and convey real and personal property.

42 U.S.C. 1983:

> Every person who under the color of any statute, ordinance, regulation,custom, or usuage of any state...subject or subjected any citizen of the United States or other person within its jurisdiction thereto the deprivation of priveleges secured by the constitution and laws shall be liable at law in equity or other proper proceeding for the parties.

28 U.S.C. 2403:

> In any action ...where the constitutionality of a statute of a state affecting public interest drawn into question. TCA 35-5-101 et seq. 28 U.S.C.2403(b).

29-27-117 TCA Partition in Kind:

> If ...exact partition cannot be made with out material injury to the parties or some one of them, the commissioners may make the partitions as equal as they can and charge the larger shares the sums necessary to equalize all ahares TCa 1932.

STATEMENT OF THE CASE

This is a new cause in a new case for the violation of Petitioner's federal civil and constitutional rights and laws of a jury trial before the sale of her investment and interest in investment in her retirement home,and accrued interest in whole of this property as provided in the Seventh, denial of due process without any just compensation for investments as provided in the Fifth, and the denial of equal treatment under Partition in Kind 29-27-117 Tennessee Code Annotated as provided in the Fourteenth Amendments ,and First Amendment by parties in Tennessee.

The Attorney General has been served pursuant to the Eleventh Amendment,and governor and parities on March 12, 1998.

The Complaint And Demand For Jury Trial with Non-consent to Magistrate Jurisdiction for relief in compensatory and punitive relief was filed in the United States District Court, Middle District of Tennessee No.1:98-0026 on February 12, 1998.

This Complaint and Demand for Jury Trial was amended to add causes and parties in the removal of orders in Dora lee Hulen and Wilma Lesnansky v Earlene Polyak Lawrence County Chancery Court 7951-96, and Circuit Court CC: 452-98(Probate No.10496) under 28 U.S.C. 1441 and defense of Diversity of Citizenship 28 U.S. C.1332 and filed in the District Court 1:98-0026 on February 24, 1998.

The orders removed after Counsel for the defendants filed notice for hearing January 30 1998, without due process of service on this Petitioner, and hearing was held on February 10, 1998 without her knowledge or presence to defend her investment and interests.

The orders removed from Chancery were No. 7951-96: Dismissal of Counter-claim(App.C.p. 42), Judgment on the Pleadings (App. C.p.45). filed on February 10, 1998. Chancery 7951-96 Order for Sale was filed on February 11, 1998 (App. p.46).

The orders removed from Circuit Court No. CC:452-98(App. C. P.48)(Probate No. 10479

Exceptions of Dora Lee hulen to Earlene Hulen Polyak's claim for reimbursement of investment in Rena Hulen Estate (App. C.p.50)dismissed on February 10, 1998.

This is the Third Complaint filed by the Respondents to sell Petitioner's constitutional rights and investments in Rena Hulen Estate at public auction without having ever been granted constitutional right of jury trial provided in the Seventh Amendment filed on May 10, 1996 in Lawrence County Chancery Court, Lawrenceburg, Tennessee.

The Second Order was submitted by Robert Boston, son of William Boston, Bates & Holt,to sell Petitioner's rights and investments at public auction without the constitutional right of a jury trial Chancery No. 1974 Frank Hulen and Wilma Lesnansky citizens and residents of Lawrence County, Tennessee v. Earlene Polyak non-resident residing at 3179 Middlefield Dr. Trenton, Michigan 48183 submitted to Honorable Jim Hamilton on the__day of September 1987.

Petitioner was not notified of the date

of auction sale, time or place, or amount of proceeds, or where order entered for right of redemption, or Right of Appeal Rule 3 TRcivP. But a local resident makes affidavit to add in Local Advocate of auction sale filed in the District Court on June 22, 1988.

The First Complaint to sell property at auction without any compensation to Petitioner was filed by Willian Boston, Boston Bates & Holt on April 19, 1983.

Petitioner was sued for the survey of this property without her knowledge or permission by Buford Evans & Sons which was denied right of appeal in the Court of Appeals and Supreme Court of Tennessee which resulted in Court of Appeals injunction (App. A. p.7).

Petitioner agreed to division in settlement by agreement with Co-Owners Frank Hulen and Wilma Lesnansky within week after mother' demise on January 9, 1976.

As Co-owners and Co-administrators, Frank Hulen divided the farm adding acres in back to his adjoining farm, with Wilma

Lesnansky getting acreage to east of house for her son to build, and Petitioner getting little old house with leaking roof and need of repair, and lot in front, about ten (10) acres

Petitioner traveled from Michigan to Tennessee over seven (7) years to restore and main tain house for a retirement home.But in 1983, Frank Hulen stated that he wanted property sold at Public auction so his"kids could buy it."

The appeal to Chancery 1974, Court of Appeals No. 83-405-II was dismissed on an UNAPPEALABLE JUDGMENT signed by Charles Holt, Boston Bates & Holt, and The Honorable Jim T. Hamilton,"without prejudice to appeal well taken, on April 26, 1984 (App. C. p. 51).

There is no final judgment or order in Chancery 1974(Appeal 83-405-II) in Tennessee Courts available to petitioner for Appeal as a Right TRcivP, or Right of Redemption.

The Court of Appeals Sixth Circuit issued injunction "that Mrs. Polyak be enjoined from filing,instituting, continuing or prosecuting

any civil actions in this Court...(App. A.p 8).

The Court of Appeals denied all appeals to dismissals of District Court on res judicata and doubled sanctions in order on November 15, 1991.

Amoung the dismissals was causes involving federal law in the transfer of burley tobacco allotment, legal malpractice by lawyers,and the violation of civil right for jury trials.

On December 28, 1995, Petitioner was obligated to file Complaint and Jury Trial Demand in Chancery Court No. 7736-95 Earlene Polyak v Frank Hulen and Wilma Lesnansky for house and lot about ten (10) acres, and for relief in damages.But the Chancery Court Judge sua Sponte dismissed complaint on February 26, 1996. Petitioner's appeal was filed but could not be perfected(App. C. p. 52).

Counsel for defendants filed this Third Complaint to sell property at public auction in Chancery No. 7951-96 Dora Lee Hulen and Wilma Lesnansky v Earlene Polyak on May 10, 1996.

Petitioner removed initial Complaint 7951-96,by Dora Lee Hulen to sell property at public auction in defense pursuant to 28 U.S.C. 1441 and counterclaimed for the constitutional right of a jury trial under Seventh Amendment before rights, property and investments sold and filed in United States District Court, Nashville, Tennessee No.1:96-0112.

Dora Lee Hulen grounded her lawsuit in Frank Hulen's demise on April 11, 1996,leaving a will naming her his only heir.

This will appears to be written sometime in December 1987, on yellow tablet paper. It is not notarized, and signature is verified by sister Wilma Lesnansky, and daughter, and filed in lawrence County Probate Court No. 10496(App. C.p.50).

Petitioner's Notice of Non-consent to Magistrate jurisdiction 28 U.S.C. 636(1) was disregarded and 96-0112 was dismissed on December 6, 1996, on Magistrate's Report and Recommendation and remanded back to Chancery Court December 7, 1996 (App. B.p. 14).

Petitioner appealed dismissal of counter-claim and remand properly with pplication Pursuant to Court Order Seeking Leave to File to the Court of Appeals Sixth Circuit on January 17, 1997 97-0508.

Meantime, it appears that counsel for the defendants filed Motion to Dismiss Counter-Claim and Judgment on the Pleading, without due process of service on Petitioner, on June 21, 1996 in the Chancery Court of Lawrence County.

Counsel used similar procedure in 10496 Dora lee Hulen Exceptions to Earlene Hulen Polyak demand for a jury trial for relief in damages for one third (1/3) restoration and repairs of Rena Hulen Estate as legal duty of Co-administrator.

Counsel did not serve Petitioner Exceptions, only Kenneth Weathers Probate Clerk, and Clerk sent copy to Petitioner, and counsel has no date to dismiss her demand for jury trial as demand for jury trial filed on November 6, 1996 in 10496, but dismissed on five(5) day

allegation in tranfer to Circuit Court in CC: 452-92 on February 10, 1998 (App.C. p. 50, 48).

Petitioner's appeal in dismissal of Complaint and Demand for a Jury trial in District Court in counterclaim filed January 17, 1997 in Application Pursuant to Court Order Seeking Leave to File 96:0112 was held without issuing briefing schedule during numerous motions for action until after February 10, 1998, over one (1) year, but dismissed on 10th of March, after Chancery Court Orders to sell on March 14, 1998,Appeal No. 97-508 3/1./98.

Petitioner submitted motions to Courts for injunction against sale of her constitutional rights to property, investment, interest in investments without constitutional right of a jury trial provided in the Seventh Amendment.

The Court of Appeal denied injunction on March 12, 1998 97-0508(App.A.p. 10).

The District Court denied injunction in 1:98-0026 on March 13, 1998(App. B.p..39).

After the U.S. Court of Appeals, Sixth, and U.S. District Court denied injunction

against sale without jury trial, Petitioner submitted these denials pursuant to Supreme Court Rules for Writ of Certiorari Stays 28 U.S.C. 2101(f), but Clerk denied without submitting to Justice addressed and alleged she called Sixth Circuit on March 12, 1998(App.A. p.12).

This Writ of Certiorai 98-240 In Re: Earlene Polyak (Court of Appeals 98-0508(D.C. 98-0112) denied and Petition for Rehearing denied

On March 13, 1998,Petitioner's property all set to be sold at public auction on March 14, 1998.

On March 11, 1998, the Court of Appeals of Tennessee holding pending appeal 7736-95, would grant improvident stay on conditions of bonds.

On March 13, 1998, Petitioner went from pending denial in U.S. District Court 1:98-0026 to Court of Appeals building in Nashville and made bond 7736-95 and 7951-96 for improvident stay

Petitioner's appeal to the United States Court of Appeals to issue writ to the District Court No. 1:98-0026 Earlene Polyak v The Honorable Charle>Burson et al., to stay case for constitutional right of a jury trial for relief Court Of Appeals No. 99-0502 was denied on February 11, 1999 (App. A. p. 2).

This application was properly submitted pursuant to Court order Application Pursuant To court order Seeking Leaveto File with copy Buford Evans & Sons 92-5240 issued on January 11, 1993 (App.A.p. 7).

The Court of Appeals denied Petition for Rehearing No. 99-0502 on march 5, 1999(App.A. p. 5).

The denial of constitutional right of appeal to constitutional right of a jury trial is the subject of this Appeal, and extension of time granted to August 2, 1999(App. C.p. 61).

The opinion of the Court of Appeals of Tennessee No. 010A-9803-CH-00133 verifies no final order and no resjudicata(App. C.p.54).

ARGUMENT

1. THE COURT OF APPEALS SIXTH CIRCUIT DENIAL OF APPEAL ON RES JUDICATA FROM DISTRICT COURT DISMISSALS OF COMPLAINTS ON RES JUDICATA WITHOUT STATE COURTS EVER GRANTING CONSTITUTIONAL RIGHT OF JURY TRIAL FOR RIGHTS INVESTMENT AND INTEREST BEFORE SALE AND INJUNCTION TO ALL SIXTH CIRCUIT DISTRICTS IS VIOLATION OF CONSTITUTIONAL AND PRO SE CIVIL RIGHTS _

The Court of Appeals Sixth Circuit denial of all appeals on res judicata from the District dismissal of complaints for right jury trial for relief in damages on res judicata, which have never been granted jury trial for right, investment and interests in state courts held for fifteen (15) years, and injunction against right to sue in any U.S. District Court is in violation of the constitution and Petitioner's civil rights Seventh.

The Court of Appeals abuses discretion in the denial of petition for Writ of Mandamus 28 U.S.C. 1651(a).The exceptional circumstances in the dismissal of all appeals in District Court on res judicata warrant tne exercise of the Court's appellate jurisdiction, and that adequate relief cannot be

obtained in any other form in any other Court, should be an aid to the Court's appellate jurisdiction in reviewing the violation of the Petitioner's constitutional right to a jury trial before these rights are sold at public auction in violation of the Seventh Amendment, denial of due process of sale without any just conpensation for rights investment Fifth, and denial of equal treatment under Partition in Kind 29-27-117 TCA in violation of the Fourteenth Amendment.

This new cause and new Case 1:98-0026 involves another violation of civil right to travel by Circuit Clerk (taking car and threats)

> The right to travel embraces three different components:the right to enter and leave another state; the right to be treated as as a welcome visitor while temporarily present inanother state, and, for those travelors who elect to become permnant residents, the right to be treated like other citizens of that state.Rita L.Saenz, California Director of Social Services et, al., Petitioners v Brenda Roe And Anna Doe etc No. 98-97 1/13/1999 (S Ct. Syllabus)

This the third time in Third Complaint to sell rights without jury trial at public auction by the same Magistrate Judge disregarding

Notice of Non-suit 28 U.S.C. 636 (c)(3) and 73 Fed R.Civ P.in Middle District of Tennessee.

> You should be aware that your decision to consent, or not consent,to the referral of your case to a United States magistrat Judge... 28 U.S.C. 636(c)(3)and 73 FrcivP.
>
> An Appeal from a judgment entered by Magistrate Judge may be taken directly to United States Court of Appeals...

After denial constitutional right of jury trial in state, before her rights were sold at public auction, she sought relief under her right as a citizen under Article III Sec. 2, Diversity of Citizenship 28 U.S.C. 1332,in federal court which has jurisdiction in constitutional rights over state courts jurisdiction ..". except as to matters governed by the U.S. Constitution and Acts of Congress" Erie v Tompkin, 304 U.S. 46 58 S Ct 817 LEd118.

The Court of Appeals Sixth Circuit injunction against petitioner filing complaint for constitutional right of jury trial violate Erie Railroad v Thompkin Supreme Court ruling,

> requires federal court to give some equitable remedies in diversity case, the only qualification is that federal court have power to grant relief.Erie Railroad v

Tompkin, Moores K.F. 8716.5 M 661.

The Magistrate Judge misrepresents the fact that all complaints same core issue after Petitioner denied constitutional right of jury trial in UNAPPEALABLE JUDGMENT signed by the lawyer Charles Holt,Boston Bates & Holt and the Honorable Jim Hamilton on December 20,1983 without prejudice to claim well taken, and no final order in dismissals for res judicata.

Complaints in the District Court for jury trial against William Boston, Boston Bates & Holt for division of loyalties and legal malpractice; Thomas Stack,Henry Henry & Stack for legal malpractice, U.S. Secretary of the Department of Agriculture for illegal transfer of Petitioner's alloted burley tobacco, and Buford Evans & Sons for illegal survey and entering upon property without Petitioner's knowledge or permission 92-5240 1/11/93.

Petitioner's constitutional right to property, investment and interest are ground for constitutional right of jury trial for relief Seventh and equal right Fourteenth

Amendments under Partition in Kind 29-27-117.

> If the Commissioners are satiefied that exact partition cannot be made without material injury to the parties or some one of them, they may make the partitions as nearly equal as they can, and charge the larger shares with the sums necessary to equalize all shares. TCA 1932.

Petitioner has constitutional right, investment, interest in investment, and possesion with electricity, telephone and taxes for over twenty (20) years supported by case history and recent Supreme Court rulings.

> ...the promise with the knowledgment of the promiser takes possession of land and makes improvements, Courts in all most states have granted Specific Performance Hagerty v Hagerty,Tenn. 172 259 (1919).

The Courts have said"taking possesion and Making improvements constitutes "good consideration in equity" Lindell v Lindell,135 Mon.368 371(1919).

And more recently"division of property in settlement by agreement"Parole partition of land followed by possession is binding and enforceable." Martin v Taylor,521 S.W. 2d 582 (Tenn. 1975).

In 1981 and 1983, Tennessee Judges divided

land in Partition in Kind 29-27-119 TCA, the Honoarble James Weatherford divided land between grandmother and children in Wayne County, lying south of Lawrence County, and the Honorable Robert Jones divided land between sisters No. 80-83 Evelyn Watson Phaler v Frances Watson Pullian,in Maury County just north of Lawrence.

The Defendants have no cause to take constitutional rights and interests without a jury trial and "taking" property unconstitutionally confisticates provate property without just compensation "and these basic rights of possessed interest"are set forth in Seawall et al., v New York City,544 N.Y.S. 2d 542(S Ct App. 1989).

In addition to possessed interest Petitioner has been obligated to pay taxes, telephone, and electricty without constitutional right of water denying whole and equal use of her investments without"economically viable use of her property" as in Situim v Tahoe Regional Planning Agency, 117 S Ct 1659(1977).

Petitioner's rights investment and inter-

est have been held for fifteen (15) years without final order entered,without constitutional right of jury trial and final order for right of Appeal Rule 3 TRcivP, and right of redemption in Tennessee Courts, with all dismissals of Constitutional right of jury trial Rule 3 FRcivP in U.S. District Court, and denials of Right of Appeal Rule 3 FRcivP FRcivP in the Court of Appeals Sixth Circuit.

2. THE COURT OF APPEALS SIXTH CIRCUIT DENIAL OF RIGHT OF APPEAL OF DISMISSALS OF DISTRICT WITHOUT CONSTITUTIONAL RIGHT JURY TRIAL MISREPRESENTS MATTERS OF FACT THAT NO FINAL ORDER IS NO RES JUDICATA

The Court of Appeals denied constitutional right of jury trial in denial of right of appeal to District Court dismissals misrepresents the fact that there is no final order on Chancery No. 1774 in Tennessee Court, and no res judicata by Petitioner in federal courts.

But Frank Hulen and Wilma Lesnansky sued Petitioner in 1983, and 1987 for sale of Petitioner's right and interests without constitutional right of jury trial.This is Third sale by Dora Lee Hulen alleging Frank Hulen naming

her his only heir after his demise on April 11, 1996 in Chancery No. 7951-96 On May 10, 1996.

This will on yellow tablet paper without notary, and only signature verified by sister and daughter may not be valid representation.

Petitioner counterclaimed Chancery 7951-96 to U.S. District Court 1:92-0112, but the same Magistrate Judge dismissed on res judicata, and 7951-96 remanded to Chancery while counterclaim pending appeal in Court of Appeals from January 17, 1997 throught March 10, 1998 without issuing briefing schedule on injunction 92-5240.on December 7, 1997(97-0509).

> And some cases imply that permitting remand of pendent state claims denies defendant protection of the removal statute and encourages manipulative dismissals, In Re: Greyhound Lines v Detroit, 598 F 2d 884.

Counsel for Dora Lee Hulen held hearing without due process of notification with Judge Hamilton on February 10, 1998, and Judge ordered property sold(See App.C.p.52).

The Court of Appeals of Tennessee reversed Judge order and remanded back to Chancery,

but 1:98-0026 amended with Chancery 7951-96 on February 24, 1998, and Chancery 7951-96 in District Court 1:98-0026 28 U.S.C. 1441.

The Court of Appeals finds no final order in Tennessee state Courts in Chancery 1974,and no grounds for Judge Hamilton's dismissals of 7951-96 and 7736-95 (01A01-9803-Ch-00133.The Magistrate Judge dismissed 1:98-0026 on res judicata on criminal case in Ohio, and awarded counsel, who denied due process of service to Petitioner on January 30, 1998, attorney fees.

Petitioner motioned for award of attorney fee be set aside on Rule 60(b) FRAUD(whether intrinsic or extrinsic, and misrepresentation by adverse party FRcivP and 28 U.S.C. 1927.

Magistrate Judge states that res judicata doctrine bars parties from relitigating issues that were or could have been raised in that action Allen v Curry,449 U.S. 90 94 101 S Ct 411 66 LEd 2d 308(1980). But four elements not present for res judicata

> (1) There must b a final judgment,(2) there must be a court of competent jurisdiction,(3)parties those in privy with

must be identical in both cases,and(4) must involve the same cause of action. T.A. Durham Inc., v Jefferson National, 793 2d 1541 154(11th Cir.1986)

The Honorable Ben Cantrell,and Judges of the Court of Appeals of Tennessee finds no final order in the Courts.

The Supreme Court has stated "it is familiar law" that only final judgment is res judicata.G&S. Merriman Co. v. Saafield.241 US 22 28 36 S Ct 277 60 L Ed 858 (1916).

The Judge did find that Petitioner "appeal was inadvertently lost,tobacco allotment transferred to another farm" but no final order.

(2) The decisions were entered by the same Magistrate Judge for the third time adverse to Petitioner disregarding complaint for constitutional right of a jury trial with Notice of Non-conset to magisrtation jurisdictions in the District Court pursuant 28 U. S.C. 636(c)(1).

(3)The parties in privey are not identicial, as Dora Lee Hulen is did not inherit, and signed away any right she might have had

to Rena Hulen Estate on October 30, 1945.

(4) The cases do not involve the same cause of action as Frank Hulen and Wilma Lesnansky sued two times for sale at public auction in 1983, and 1987 in Lawrence Chancery, but Petitioner has never sued for sale of her rights investments and interests. Judge finds

> "and she set out in a journey in federal courts, seeking to enjoin the sale of property and to recover damages for "A HOST OF CIVIL RIGHTS VIOLATIONS"

3. THE COURT OF APPEALS SIXTH CIRCUIT DENIES JURISDICTION FOR CONSTITUTIONAL RIGHT OF OF JURY TRIAL IN DISTRICT COURT FOR RIGHT INVESTMENT AND INTERESTS IN VIOLATION OF ARTICLE III Sec. 2 AND ERIE DOCTRINE

The court of Appeals Sixth Circuit denies jurisdiction for constitutional right of jury trial in Seventh,due process of service by counsel, and without any just compensation for right to investment and interests Fifth, and constitutional right of jury trial denied in in state courts 28 U.S.C. 1443(1)(1)and 1983.

The State Court does not have jurisdiction of Chancery 7951-96, on appeal in 97-0508 from January 17, 1997 through March 10, 1998

and denied injunction against auction sale in 97-0508(D.C. 1:96-0112)on old injucntion Evans & Sons v Earlene Polyak 92-5240.

Petitioner's civil rights under First Amendment to travel in Tennessee to defend right to retirement home violated again on March 13, 1999, when Lawrence County Circuit Court Clerk removed Buford Evans illegal lein from her individual property to her car, and Sheriff threatened to put her disabled World War II, husband on crutches on street. This action and party in District Court amended complaint No. 1:98-0026.

CONCLUSION

In view of the above violation of constitutional right of jury trial in the state courts and denial of federal court relief as in Erie Doctrine of constitutional right of a jury trial in violation of the Seventh, and denial of of due process and any just compensation in state or federal court as in the Fifth, and violation of equal treatment under Partition in Kind 29-27-117 TCA under the Fourteenth Amend-

ments, and denial of First Amendment Civil right to travel in Tennessee, Petitioner prays that a writ of certiorari issue to review the Court of Appeals Sixth Circuit and District Court for the constitutional right of a jury trial for relief in damages as set forth in complaints before and unbiased tribunal in the District Court.

Respectfully submitted,

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I certify that the above is true to the best of my belief and knowledge.

_____

_____
NOTARY PUBLIC

My Comn' expires on _____

CERTIFICATE OF SERVICE

I certify that a true copy of this pleading has been served by United States Mail to Mary Byrd Ferra, Assistant Attorney General, 425 Fifth Ave. N., Nashville, Tennessee 37243; D.Randall Mantooth, Leiter, Williams,Dooley and Napolitan, 2300 First American Center, Nashville, Tennessee 37238-2300, and Dalton Mounger, 806 Garden Street, P.O. Box 1468, Columbia, Tennessee 38402 on the _____ day of _____ 1999.

_____

EARLENE POLYAK

CERTIFICATE OF SERVICE

I certify that a true copy of this Petition for Writ of Certiorari has been mailed to the representative of interested parties as follows on the _____ day of _____ 1999:

THE HONORABLE JANET RENO
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THE HONORABLE CHARLES BURSON
ATTORNEY GENERAL OF TENNESSEE
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THE HONORABLE DON SUNDQUIST
GOVERNOR OF TENNESSEE
STATE CAPITOL First Floor
Nashville, Tennessee 37243

FRANK HULEN ESTATE
35 Jonestown Road
Summertown, Tennessee 38483

DORA LEE HULEN
35 Jonestown Road
Summertown, Tennessee 38483

WILMA LESNANSKY
29 Jonestown Road
Summertown, Tennessee 38483

THE HONORABLE JIM HAMILTON
CHANCERY AND CIRCUIT COURTS
240 West Gaines Street
Lawrenceburg, Tennessee 38464

GERALD WILSON CLERK
CIRCUIT COURT OF LAWRENCE COUNTY
240 West Gaines Street
Lawrenceburg, Tennessee 38464

GENEVA FRISBEE CLERK AND MASTER
CHANCERY COURT OF LAWRENCE COUNTY
240 West Gaines Street
Lawrenceburg, Tennessee 38464

DALTON A MOUNGER
Attorney At law
806A- South Garden Street
P.O. Box 1468
Columbia, Tennessee 38402

APPENDIX A

In the United States Court of Appeals for the Sixth Circuit No. 99-0502.

Earlene Polyak v The Honorable Charles Burson, Frank Hulen Estate; Dora Lee Hulen; Wilma Lesnansky; The Honorable Jim Hamilton, Circuit and Chancery Judge; Jerald Wilson, Circuit Court Clerk; Dalton A. Mounger, and Geneva Frisbee, Clerk and Master No. 1:98-0026.

Filed: February 12, 1998.

Amended: February 24, 1998.

Before: SILER, BATCHELDER, AND COLE.

Application for Leave for Writ of Mandamus to District Court for Jury Trial.

Denied: February 9, 1999.

Rehearing:

Denied: March 5, 1999.

No.99-0502

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: EARLENE POLYAK

FILED FEB 9-1999

Before SILVER, BATCHELDER, and COLE, Circuit Judges.

The petitioner has submitted to this court a document styled as an "Application for leave for permission for application for stay for writ of mandamus for jury trial demand for relief in injunctive and compensatory and punitive damages." Although she fails to state the paticular relief she seeks from this court it appears she wants this court or the district court to stay pending sale of real estate included in her mother's estate.

Because of the voluminous and repetitive litigation filed by the petitioner in regard this court entered an order on January 11, 1993 enjoining the petitioner from filing, instituting, continuing or prosecuting any civil action in this or any other federal court in this circuit without first obtaining leave,to certify that any claims presented or

by proposed action are new claims never before raised and disposed of on the merits by any federal court. Among the future filing which this court specifically enjoined was litigation originating from the partition sale of land in Tennessee inherited by Mrs Polyak and her siblings as tenants in common.The court also provided that any motion for leave to appeal to this court must be captioned Application Pursuant to court Order Seeking Leave to file and must have at tached thereto a copy of the court's January 11, 1993 order. A failure to strictly comply with the terms of that order the court warned would be grounds for summarily denying leave to file. See Buford Evans & Sons v Polyak No 92-5240(6th Cir. Jan 11, 1993(un published order)

The present application does not meet several of the requirements set forth in the above order. In addition to the fact the application is not in the required form,the subject matter of application appears proposed partittioion sale of inherited Tennessee land---

an issue which is expressley enjoined from further federal court litigation under 1993 order.

It is therefore ordered that application by petitioner is denied.

ENTERED BY ORDER OF COURT
s Leonard Green Clerk

No. 99-0502

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: EARLENE POLYAK

FILED MAR 5 1999

Petitioner

ORDER

Before: SILER, BATCHELDER, and COLE

The petitioner submitted to this court an application for leave to commence a civil action, the apparent goal of which to stay the pending partition sale of land inherited by the petitioner and her siblings.The application was denied in order on February 9, 1999 The petitioner now seeks rehearing of her application.

In 1993, this court entered an order requiring the petitioner to seek prior approval from any federal court in this circuit before filing, instituting, continuing or prosecuting any civil action. The order provided strict instructions in this case.Also the 1993 order enjoined the petitioner from further litigation in federal court originating from partition sale of inherited land.Although petitioner

filed asserts that recent activity in the state courts gives rise to new claims not raised in prior litigation, the subject of the proposed litigation-the partition sale of the land falle within this prohibition.

It is therefore ordered that the petition for rehearing is denied.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green, Clerk

NO. 92-5240
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BUFORD EVANS & SONS FILED JAN 11 1993

Plaintiff-Appellee

v ORDER

EARLENE POLYAK

Defendant-Appellant

BEFORE: KEITH NELSON and RYAN, Circuit Judges:

This case is before the court on Mrs. Earlene Polyak's response to show cause order issued by this court. The show cause order requested Mrs Polyak to indicate why injunction should not be entered against her to prevent her from filing continued frivolous litigation We have examined Mrs. Polyak's response and it contains no arguments that would prevent the issuing of an injunction. Mrs. Polyak's repititous litigation makes the entry of such an injunction appropriate. See Lysiak v Comumn, 816 F 2d 311, 312-13(7th Cir 1987).

Upon consideration of the court, it is hereby ordered that Mrs Polyak be enjoined from filing, instituting, continuing or

prosecuting any civil action in this or any other federal court in this Circuit without first obtaining leave of that court.

In seeking leave to file, Mrs Polyak shall certif that the claim or claims she wishes to present are new c never before raised and disposed of on the merits by any federal court.

Such claims may not be related to or arise from the following: litigation orignating from the partition sale of land in Tennessee inherit ed by Mrs Polyak and her siblings as tenant in common, objections to fees or sanctions for which ordinary review has been exhausted, or claims against any state or federal judge, officer, or employees for actions taken in the course of their official duties exercised in connection with Mrs Polyak's previous litigation.She shall certify that her action is taken in good faith and the claims she raises are not frivolous or malicious.

A motion for leave to appeal must be captioned Application Pursuant to Court order Seeking leave to file, and Mrs Polyak must affix a

copy of this order to that motion. Failure to comply strictly with the terms of this injunct ion will be grounds for summarily denying leave to file. Claims considered malicious, frivolous or brought in bad faith may be grounds for civil contempt proceedings.

The following procedures shall govern any appeals in this courtfiled by Earlene Polyak until such time as the court may ot wise order.

Upon timely receipt of a complete petition for leave to appeal, the court shall direct the clerk of an appropriate lower court to transmit the full record of the underlying case. No fur ther proceedings shall take place in this court nor shall any further fillings be accepted, until this court has reviewed the petition to determine whether Polyak's appeal presents a colorable claim. This injunction applies to all appeals and other actions commenced after the date on which this order is filed.

ENTERED BY ORDER OF THE COURT
s/ leonard Green Clerk

No. 97-0508

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: Earlene Polyak

FILED MAR 12 1998

Petitioner

ORDER

Before: KRUPNANSKY, NELSON and BATCHELDER, Circuit Judges.

The petitioner has submitted to the Court for an injunction enjoining the sale of real estate, pursuant order of the Chancery Court for Lawrence County, Tennessee, scheduled for March 14, 1998. She asserts such an injunction is needed because the state courts denied a jury trial in the underlying estate proceeding for partition of property.

In order of January 11, 1993, this court enjoined the petitioner from filing further appeal in this court unless she first filed an application for leave to appeal and certified that the claim or claims to be raised were new and had never previously been presented to or disposed of on merits by any federal court.That order expressley prohibited the petitioner from presenting,inter alia, any claims related

to or arising from the partition sale of land in Tennessee inherited by Mrs Polyak and her siblings as tenants in common..."The Petitioner filed such application for leave to appeal in this case and, in order March 10, 1998, we denied such application on grounds it did not comply with January 11, 1993 injunction. There is nothing presented in the present application for injunctive relief which would warrant re-consideration of that order or a different result.

It is therefore ordered that the application for injunction is denied.

ENTERED BY ORDER OF THE COURT

s/Leonard Green Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

William K Suter
Clerk of the Court

MARCH 11 1998

RE: Earlene Polyak v Frank Hulen Estate, dora Lee Hulen and Wilma Lesnansky

Dear Mrs. Polyak:

Your application for injunction received March 6, 1998 is herewith returned for the following reasons:

For the reasons stated in my letter dated March 3, 1998 . In addition I checked with the Sixth Circuit and they do not have a request for an injunction pending, there is no record that you have requested this relief from the lower courts. Your check in the amount of $300 is again returned.

Sincerely,
William K. Suter, Clerk
s/Cynthia Rapp
202 479-3031

APPENDIX B

In the United States District Court for Middle District of Tennessee.

Earlene Polyak v The Honorable Charles Burson; Frank Hulen Estate; Dora Lee Hulen No. 1:98-0026, Filed February 12, 1998

Amended with removal of Chancery No.7951-96;Dismissal of Counterclaim; Judgment on the Pleadings; Order for Sale, and CC: 452-98 (Probate No. 10649) and Parties: The Honorable Jim Hamilton,Chancery and Circuit Judge;Jerald Wilson, Circuit Court Clerk; Dalton Mounger; and Geneva Frisbee C&M on February 24, 1998.

Second Amended Complaint and Parties were not granted or issued summons.

Dismissed: Complaint and Jury Trial Demand, Non-consent to Magistrate Jurisdiction No. 1:98-0026 on March 4, 1999.

Judge:Altea A. Trauger.

Magistrate Judge:William B. Hayes'Report and Recommendation filed Dec. 11, 1998.

Order: March 4, 1999,NOA,April 2, 1999

Second Order,6/8/99,NOA 6/21/99.

IN THE UNITED STATES DISTRICT COURT
FOE THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

EARLENE POLYAK

FILED 7 8 98

v

JUDGE CAMPBELL

THE HONORABLE CHARLES BURSON
et al.,

ORDER

Pending before the Court is the Plainiffs Non- Consent and Objection to magisrate and Motion to Set Aside Order (Dkt.No. 39).Plaintiff objects to this Court May 20, 1999, in which it referred this case to the Magistrate Judge for entry of a scheduling order, for decision on all pretrial , nondispositive motions, and reports and recommendations on all dispositive motions See Docket No. 37.

Plaintiff misunderstands the Court's order. Plaintiff is correct that consent to have a case tried by the Magistrate Judge is entirely voluntary. Plaintiff is correct that she is entitled to have her case tried in this Court by the Court and /or jury.

The Order referring this case to

Magistrate judge for nondispositive ,pretrial matters does not disturb or violate Plaintiff constitutional rights. The merits of Plaintiff case will be tried and decisions entered and decided by the Court, The Magistrate Judge will merely make a preliminary, pretrial,non-disposivite decisions and enter a scheduling order for the orderly and expident conduct of this case.

Federal law provides that the Court may designate a Magristrate Judge to hear and determine any nondispositive, pretrail matter pending before the court 28 U.S.C 626(b)(1)(A). This Court may reconsider any such ruling if the parties can show that it is clearly erroneous to law.Id. In addiditin, this Court will decide all dispositive matters, such as motions to dismiss or motions for summary judgment, and this Court will conduct the trial. Plaintiff's Objections are overruled.

s/ Todd Campbell
United States District Judge

UNITED STATED DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

Office of the Clerk
800 UNITED States Courthouse
Nashville, Tennessee 37203

Roger A. Milan Clerk

APRIL 8 1999

Ms. Earlene Polyak
145 Lakeside Drive
Jupiter, Florida 33458

RE: Polyak v Burson ,Case No. 1:98-0026

Dear MS Polyak:

I am returning your Notice of Appeal to the Sixth Circuit along with your filing fee of $105.00. Also included in an order from Judge Trauger stating that we are not to accept no more filings from you without leave of the Court. I was not aware of this Order until this morning. These documents were recieved in our Court on April 2, 1999.

Sincerely,

s/Roger A. Milan,Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

Office of the Clerk
800 United States Courthouse
Nashville, Tennessee 37203

March 30, 1999

Ms. Earlene Polyak
145 Lakeside Drive
Jupiter, Florida 33458

RE: Polyak v Burson Case No. 1:98-0026

Dear Ms. Polyak

I am returning your notice of Appeal to the Supreme Court along with your objections and Demand for Oral Argument and your filing fee of $105.00 These documents were received in our Court on March 12, 1999. They cannot be filed in the District court but must be filed with the Clerk of the Supreme Court of the United States with filing fee $300.00.. You have ninety days from the Order of the Sixth Circuit denying your Application for Permission fo File Writ of Mandamus to file Petition for writ of Certiorari with the Supreme Court. This means that to be safely within the ninety-day time frame, you must complete this procedure in accordance with the Supreme Court rules no later than May 1, 1999. The order of the Sixth Circuit was entered on or about February 16, 1999.

The address of the Supreme Court:

Hon. William Suter,Clerk
U.S. Supreme Court
1 First St. N.E.
Washing, D.C. 20543-0001
Sincerely,
s/Roger A. Milan,Clerk

DALTON M. MOUNGER
Attorney at Law
808 South High Street
Columbia, Tennessee 38402-1468

Estate of Frank Hulen
Dora Lee Hulen
Wilma Lesnansky
P.O. Box 1469
Columbia, Tennessee 38402-1469

RE: Earlene Polyak vs The Honorable Charles Burson et al,,
U.S. District Court
Middle District of Tennessee
No. 1-98-0026
Judge Trauger

Date	Description	Amounts
3/11/98	Review Complaint telephone calls with Glenn Hulen, Judge Higgin's Clerk,Ms Frisbee and Ms Clifton	$165.00
3/20/98	Telephone call from Glenn Hulen re response to federal lawsuit	37.50
3/30/98	Review deadlines for responding	45.00
3/31/98	Begin preparation motion; research former lawsuit pending	122.50
4/02/98	Letter to Randall Mantooth re motion	22.50
4/08/98	Telephone call from Attorney General re motion	45.00
4/20/98	Receipt review of motion for extension of time and	

	telephone call from Glenn Hulen	112.00
4/23/98	Receipt and review of motion filed by Attorney General	37.50
4/28/98	Receipt and review of motion filed by Polyak	15.00
5/8/98	preparation of motion	150.00
5/18/98	Receipt and Review of Counterclaim for mal-practice	52.00
5/19/98	Telephone call from U.S. District Court re filling on motion	37.50
6/1/98	Preprartion of response to counterclaim	165.00
6/8/98	Receipt of new pleading from Polyak	37.50
6/11/98	review of second counter-claim against Dalton Mounger for legal malpractice	52.50
7/10/98	Receipt of order denying non-consent to Magistrate	37.50
7/27/98	Review of filings	22.50
10/22/98	Telephone call from Randall Mantooth	30.00
12/17/98	Review of Magistrate Recommendation	37.50
12/17/98	Letter to Glenn Hulen	30.00
12/17/9	Review filling Tennessee Court (state court)	37.50

1/26/99	Review filing in Court in Nashville	60.00
1/2/99	Review filing by Polyak Tennessee Court	60.00
		$ 1,687.50

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EARLENE POLYAK

FILED 3 4 99

Plaintiff

v

Civil Action 1-98-0026

THE HONORABLE CHARLES BURSON
ET AL.,

ORDER

Presently pending before the Court is the Magistrate Judge's Report and Resommendation (R&R) entered December 15, 1998(Docket Entry No. 51) to which Plaintiff has filed an objection(Docket Entry No. 55) and supplemental objection(Docket Entry 60).

Pursuant to Rule 72(b) Federal Rules of Civil Procedure and Local Rule 302, this Court is required to review the Magistrate Judge's recommendations de novo Rule 72(b) specifically states:The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the Magistrate instructions.Fed.R. P.72(b)

Aft fully reviewing the record in this case, including the Ma istrate udge's

Report and Recommendation and objections there to, the Court is of the opinion that the Magistrate Judge's Report and Recommendation and objections thereto, the court is of the opinion that the Magistrate Judge's findings and conclusion's are correct and they are here by adopted and approved. More specifically, the Court agrees that the plaintiff's law suit is barred by the doctrine of res judiciata because the allegations and claims arise from the same cause of action and allegations as in Hulen v Earlene Polyak No. 1-96-0112 M.D. Tenn.(Higgins J.) and Polyak v Hulen 1:84-0083 M.D. Tenn (Wiseman J),Which were both barred under res judicatta doctrine.

Accordingly, defendants' motion to dismiss (Docket Entry Nos. 16,22,26, and 29 are hereby granted, and defendants, Frank Hulen Estate, Dora Lee Hulen, Wilma lesnansky and Maunger's motion for sanction(Docket Entry No. 41) is granted so as to award attorney fees.Defendant motions to strike plaintiff's motion for exten sion of time(DockeT Entry Nos. 54, 56) are

hereby denied as moot. Counsel for the defendants shall file fee affidavits within 20 days ofthis order, and the court hereby refers awarding of fees to Magistrate Judge Hays.

The court further orders that the plaintiff shall be required to obtain leave of court to file any future actions in light of her repeated filings despite prior court sanctions. The Clerk is hereby directed to not accept future filings by the plaintiff without prior order of the court. After awarding of fees, this case will be dismissed with prejudice pursuant to Fed.R. Civ.41(a)(2).

It is so ordered

Entered this 4th day of March,1999.

s/Aleta A. Trauger
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EARLENE POLYAK

Plaintiff

FILED DEC 11 1998

v

No. 1:98-0026

THE HONORABLE CHARLES BURSON et al.,

REPORT AND RECOMMENDATION

I INTRODUCTION

This civil action was referred to the magistrate Judge by the Honorable Todd J. Campbell, District Judge, by order entered may 20, 1998(Docket Entry No. 37). The Magistrate Judge was directed to enter a scheduling order, decide all pretrial, nondispitive motions, and provide reports and recommendations on all dispositive motions.

Plaintiff Earlene Polyak filed this action 28 U.S.C. 1332, the federal diversity statute, originally against the defendants;Honorable Charles Burson,former Attorney General of Tennessee, the current Attorney General of TennesseeJohn Knox Walthrop, Frank hulen Estate,

Dora Lee Hulen, and Wilma Lesnansky concerning the family farm inherited by Earlene Polyak, Frank Hulen, and Wilma lesnansky from their Mot her, Rena, in 1976. In Polyak's amended complaint(Docket Entry No. 2) she adds parties Gerald Wilson, Circuit Court Clerk, Dalton A. Mounger, and Geneva Frisbee, Clerk and Master. Polyak also servedprocess on Judge Jim Hamilton and the Governo of Tennessee although they are not named as parties in the captions or body of the orinal complaint or amended con-complaint.

In her amended complaint(Docket Entry 31) Polyak demands $690.00 from buford Evans,which she cont ends is owed by Frank Hulen and Les-nanskyfor illegal survey conducted fifteen(15) years ago.Id at 175. Polyak further complains to set aside any leins on her property for an award of funds for attorneys Robert Boston, and Boston Bates & Holt Id at 177. Polyak also seek to file a second amended complaint against Defendant Dalton Mounger for legal malpractice. (Docket Entry No. 36).

Pending before the court are several motions.the first motion is to dismiss by defendants Frank Hulen estate, ora Lee Hulen, Wilma Lesnansky, and Dalton Mounger(Dkt.No. 22 seeking dismissal of Polyak's complaint and amended complaint contending that the doctrine of res judicata bars Polyak's relitigation in her complaints. Second, the defendants Wilson and Frisbee move to dismiss for the same reason as well as alternatively moving for a more define statement of facts as to their alleged acts or ommissions(Dkt No. 26).Third, the Defendants Walkup, governor of Tennessee,and Judge Hamilton move to dismiss this action against them for failure to state a claim.(Dkt.Nos 16 and 29). Fourth, the defendants Hulen estate, Hulen Lesnansky and Mounger move for sanctions against the plaintiff for this frivolous filing Fed. R. Civ.P 11(Dkt No. 41).

In response, Polyak reiterates the defendant violated her federal rights to due process a jury trial and equal treatment (Dkt. Nos27 32

For reasons set forth the Magistrate Judge

concludes that this action is barred by the res judicata doctrine in light of plaintiff's numerous attempts to litigate the core claims in this action in this and other courts. Thus pending motions to dismiss should be granted as well as motions for sanctions.

II ANALYSIS OF THE COMPLAINTS AND MOTIONS

According to her original complaint, this action arises from state court oroceedings relating to the property in the estate of Rena Hulen to which Plaintiff calims an interest (Dkt No. 1 and original Complaint at 13).There is a reference to a removal of-that state court however, there are no formal removal papers.

In her original complaint, Polyak alleges that she never agreed to the partition sale of Rena Hulen Estate Id at 28. Polyak claims that noneof the defendants contributed any labor or any money for the removal and the restoration of the roof on Rena Hulen's house, which plaintiff extended for a retirement home Id at 15. Polyak asserts that she has paid over one (1/3) of expenses on estate and she has been denied

enjoyment of her interest in her partition of the estate. Polyak alleges that she has been denied power of administatrix. Polyak alleges that she suffers from stress and anxiety from her numerous court involvement in her suits, embrassement in defending her constitutional rights, the loss of interest her investment, and loss of everday pleasures of life.Id.

During the pendency of the federal procee ding on June 19, 1996,Dora Lee Hulen and Wilma Lesnansky filed a motion to Dismiss Counter-claim and a Motion for Judgment on the Plead-ings.In the actions for partition on January 30, 1998 motions were set for hearing on Feb-ruary 10, 1998. A copy of the notice of hear-ingwas sent to the address Polyak used in the was sent to the address that Polyak used in filing that she made with the United States Court of appeals for the Eleventh Circuit on December 18, 1998 and a filing with the Court of Appeals of Tennessee, Middle Tennessee on January 16, 1998. On February 10, 1998 the Chancery Court for Lawrence County,Tennessee

dismissed Polyak's counter-claim, granted judgment on the pleadings, and ordered the family farm sold in partition sale.

Defendants note that Polyak has had liti-pending in six different courts on the same claim that have already been decided in sever-al courts the United States Court of Appeals for the Sixth Circuit.The defendants further contend that the doctrine of former suit pending applies because there are several law suits concering the same issues pending which prevents this court from having jurisdiction of this case. Also the defendants contend that Polyak fails to state a claim upon which relief can be granted.

For other defendants, Jerald Wilson and Geneva Frisbee rely upon t he motion to dis-miss and exhibits attached thereto filed by the defendants Frank Hulen Estat e, Dora Lee Hulen, Wilma Lesnansky, and Dalton Mounger. Defendant Walkup,Attorney General Tennessee notes that the only mention of him is in paragraph 59 of the original complaint (Dkt No

1) where Polyak states that she mailed a copy of summons dated February 12,1998 to former Attorney General Charles Burson. Defendant Walkup asserts that there is no mention of General in the original complaint or amended complaint.Id at p. 2. Similar, the Governor of Tennessee and Judge Hamilton are not named in either complaint nor amended complaint.Judge Hamilton also asserts the the judicial immunity doctrine as well as the doctrict of res judicata.Polyak previously sued Judge Hamilton about partition of this property, and upon appeal the Sixth Circuit entered an order dis missing the action and entered an order on November 29, 1989 refusing to reopen litigation against Judge hamilton.

the Magistrate Judge finds that the allegations and claim in this action derived in the claim and allegations in Hulen v Polyak No. 1:96-0112. The Honorable Thomas A Higgins referred plaintiff's motion to the Magistrate Judge to prepare proposed findings of fact and recommentations for dispostition(Dkt No.

5. The Magistrate Judge found the following

Facts:

Plaintiffs Dora Lee Hulen (Hulen) and Wilma Lesnsnaky(Lesnansky)originally filed declaratory judgment action in the Chancery Court of Lawrence County against the defendant Earlene Polyak (Polyak) a resident and citizen of Trenton, Michigan (Dk.E No.1 Attachment thereto). Plaintiff seek a declaration of their rights to have a partition of real property consisting 42.5 acres a house and barn, in Lawrence, Courty, Tennessee, This property was part of the estate of Frank Hulen, the partie's father. The plaintiffs seek a declaration of their right to petition and sell this property with proceeds there from to be distributed among the plaintiffs

In response to the plaintiffs'complaint,Polyak filed an answer and counterclaim in this court,attaching a copy of plaintiffs' complaint in state action.This court treated the defendant's papers as a removal petition under 28 U.S.C. 1441.

In answer part of her pleadings, Polyak alleges deprivation of her rights under Fifth, Seventh and Fourteenth Amendments and asserts 42 U.S.C. 1981,1982,1983 Ployal also cites 28U.S.C. 2043 but that stat ute relates to the handling of funds by a District court Clerk In affition to federal claims Polyak asserts state common law claims for fraud amd misrepresenta tion by the plaintiffs' counsel who is not a part y. For relief Polyak seeks damages and injunctive relief.

Note: This property Rena Hulen Estate. from Earl R. Hulen Estate.

As to factual allegations, Polyak alleges that on December 28, 1995, she filed a complaint that was dismissed and the Clerk and Master allegedly denied Polyak an appeal. According to Polyak's answer,however, there were two unsuccessful appeals, one which involved an **UNAPPEABLE ORDER**.According to allegatiosn in her answer,partitions and sale of the property were attempted in 1981 or 1983,and between November 1987, and September 21, 1988Id.

In the section of Polyak's pleading in this action containing her counterclaim these claims are for denial of constitutional right and interest in the whole and equal right under Tennessee Statute 29-27-117 Partition in Kind.CounterPlaintiff contends that any order divesting her constitutional right and interest in whole and equal right of Rena Hulen Estate be set aside pursuant to Fed .R. Civ P.R60(b) Answer Counterclaim and Jury Trial demand at P.3).In addition Polyak alleges a denial of jury trial claim by state court clerk Id p.4. For her denial of a jury claim, the St ate court allegedly ruled against Polyak,while Polyak had another action pending before a jury or that was to be tried for a jury Id.*The dates of these court proceedings is alleged 1974 or 1981(sic 1983) Id At 4).Polyak's denial of appeal charge refers to a dismissal of her appeal in state court without prejudice because the state trial court order Polyak challenged on appeal unappealable. Id at 4 Polyak also challenges the transfer of federal tobacco allotment from this property without notice to her. Id.

In their pending motion to dismiss,the plaintiffs argue Polyak"s Counterclaim in this action is barred by res judicata in the light of the prior adjudications of

*No jury trial ever given by any court

of Polyak's right and legal interests in this property by the United States Court Appeals for the Sixth Circuit and the State Court.Plaintiffs argue that the state court have also determined Polyak's rights at issue here,but that Polyak has repeatedly litigated these claims despite prior court rulings against her. Due to the confucion caused by Polyak's vexatious conduct in the Courts, plaintiffs filed this declaratory judgment action to clarify the state court record.

In prior federal action cited by the plaintiffs, the Sixth circuit entertained nine actions filed by polyak in this District,contesting the partition sale of the property inherited from the parties parents(Dke. Ent. No. 3 Ex D)*. The Sixth Circuit noted that failing in state court litigation, Mrs Polyak began her assult on the petition sale in federal court in 1985 Id P. 2.The parties in the Sixth Circuit action included the plaintiff Lesnansky here and Polyak's brother Frank Hulen.The Court of Appeals concluded.

Additionally, a review of Polyak's long history of litigation reveals that she is once again seeking to relitigate the partition sale of the family farm*.Al though she is claiming the unconstitutional deprivation of property interest, her claim is nothing more than a recycled argument that could have been raised in 1976 during property's partition. The same deprivation of tobacco allotment argument has been argued on appeal at least four times,and sanctions against Mrs Polyak were imposed in Case No. 89-5496 and Case No.5655/5656/5657,* which asserted that her numerous cases be reopened on the basis of new evidence.*(Henry, Henry & Stack).

*Rena Hulen Estate

The Report and Recommendation concluded that action was bar red under res judicata doctrine.Accord Polyak v Hulen 1:84-0083 M.D. Tenn Order filed December 3, 1984(Wiseman D.J).

III.CONCLUSIONS OF LAW

For the applicable principle of law, the doctrine of res judicata and collateral estopell have long been invoked to bar an action that is based upon illegal claims/ and or facts asserted in a prior action. The res judicata doctrine bars parties from relitigating issues that were or could have been raised in that action" Allen v Curry449 U.S. 90 94 101 S Ct 411 66 L Ed 2d 308(1980). Under collateral Estopell doctrine once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude re-litigation of the siiue on a different cause of acrtion involving a party to the first case. At 94(citing Montana v United States,440 U.S. 147, 153, 99 S Ct 970,59 L Ed. 2d 210(1979).Federal Law on res judicata and collateral estaopel obtains if the prior action involved a federal Claim See. Allem 449 U.S. 94-95.

In City of Canton Ohio v Maynard, 766 F 2d 236 238(6th Cir 1985), Court of Appeals explained generally there were two branches of res judicata doctrine. As a general proposition of law,there two bran ches of res judicata, claim preclusion and issue preclusion. Under claim preclusion branch,an earlier final judgment on merits precludes a party from raising an issue in new litigation that should have been advanced in the earlier proceeding. Under the issue preclusion branch parties are precluded from reliting an issue of law

or factwhich was necessarily in a previous final judgmentAccord Childs v Trippett, 56 P 3d 64 1995 WL 299042(6th Cir 1995)(unpublished) Childs previously filed a suit against Wallace, finley and Roach in 1992 raising issues presented in this case.Therefore Childs claims as to these defendants are barred by the doctrin of claim preclusion(citation omitted).

The absence of idential parties in the prior does not void the preclusive effects of res judicat daoctrine.Smith's issue relating to his parole revocation were properly dismissed under the doctrine of res judicata.Smith had fair opportunity to fully litigate his parole revocation in a mandamus/habeas corpus action brought be fore the Court of Appeals,Tenth Appellate District. Smith argues that claim preclusion does not apply in this case be cause the defendants in the state action differed from the defendants in the instant case.However, both Capots(as director and Flannery (parole officer) are privies ot the OAPA and thus satisfy the requirements for res judicata.

Smith v Capots, 78 F3d 585,1996 WL99322 (6th Cir 1996).

All of these claims appear to have been asserted in Polyak's 1985 federal action and subsquent appeal,or could have been asserted in several actions culminated Sixth Circuit appeal quotated above. Polyak's claims in her counterclaim in this action include events allegedly occur ing in 1981, 1983 and 1987 court proceedings.The alleged partition and alleged denial of federal tobacco claim were clear ly presentedand determined in that appeal. From the pendency of this action in state there remains the prospect for appeals.

> Given the nature of Polyak's counterclaim and the allegations in her pleadings, the Magistrate Judge concludes that the Court should adopt the above quotated rationale in the Sixth Circuit Court of Appeals that the doctrine of res judicata bars Polyak's additional attempt to determine matters previously determined adverse to her in the state and federal courts.Polyak's claims in this action should be remanded to state courts.
>
> For these reasons, the Magistrate Judge recommends that the plaintiffs'asserted federal claims be dismissed with prejudice and that the plaintiff's motion to remand this action to state Court be granted.

Hulen v Polyak No. 1;96-0112 Dk Entry No. Report and Recommendation and dismissed that action withprejuedice. Id Dkt Entry Order entered November 4, 1996.

The Magistrate Judge concludes that this action is yet another attempt by Polyak to relitigate same issue. The Magistrate Judge concludes that Polyak's claim in this action are barred by the doctrine of res judicata and should be dismissed.The Magistrate Judge con cludes as did Judge Wiseman that Polyak's re peated filings of these claims violates Fed.R. Civ.P 11 and warrants an award of attotney's fees.Polyak v Hulen et al., 1:84-0083 M.D.

Tenn. Memorandum ar 1-2(Wiseman DJ). The Magistrate judge also concludes that any costs incurred in this action should be imposed upon the Plaintiff, Sales v Marshall,873 F 2d 115, 120(6th Cir 1989), and that Polyak should be required to obtain leave of the Court to file any future actions Filipas v Lemons, 835 F 2d 1145, 1146(6th Cir 1987). In light of Polyak's repeated filings despite prior court sanctions, this form of injunctive relief is necessary.

IV. RECOMMENDATIONS

For the reasons above the Magistrate Judge recommends that defendants' motion to dismiss (Dkt Entry 16, 22, 26, 29) be granted and the defendants Hulen Estate, Hulen, Lesnandky and Mounger's motion for sanctions (Dkt Entry No. 41) be granted so as to award them their attorney fees in accordance with Local Rule 13. The magistrate Judge further recommends that the costs be assessed against plaintiff and that the Clerk be directed not to accpet any papers presented to the Clerk without prior order of the Court. Under ruoe 70(b) the

Federal Rules of Civil procedure, any party has ten (1) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation, with the District court. Any party opposing said objections shall have ten (10) days from the receipt of any objections filed to this repore in which to file any response to said objections. Failure to file specific object ions within ten (10) dyas of receipt of this report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v Arn, 474 U.S. 140, 106, S.Ct 466 88 L Ed 2d 435 (1985)reh'g denied 471 U.S. 111(1986).

Entered the 11th day of December, 1998.

s/ WILLIAM J. HAYES,JR.
United States Magistrate
Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILED MAR 13 1998

V

No. 1:98-0026
Judge Campbell

HONORABLE CHARLES BURSON
et al.,

ORDER

On March 14, 1998, a court ordered auction will be held in Lawrence County to dispose of the estate of Rena Hulen, the plaintiff's deceased mother. The plaintiff has filed an application March 6, 1998 (Dkt. Entry No. 5) for an injunction to stay auction.

In exercising its discretion to grant a temporay injunction, a district court must weigh (1) whether the plaintiff has shown a strong or substantial likelihood of success on merits (2) whether the plaintiff has shown irreparable injury,(3) whether the issuance of a preliminary injunction would cause harm to others, and (4) whether the public interest would be served by the issuance of a preliminary injunction. Friendship Materials Inc.v.

Michigan Brick Inc.,679 F2d 100 102(6th Cir 1982).

The plaintiff has made no strong or substatnial showing that she will prevail on the merits. Nor has she demonstrated that injunction needed to prevent irreparable harm.The auction may result in a finacial loss to the plaintiff. This loss may later be recovered as damages should she be successful on merits.

In any event,a preliminary injunction can not issue without notice to all adverse partiesRule 65(a)(1), Fed R.Civ P.. The certificate os service accompanying the plaintiff's application indicates that only two of the six defendants were served with a copy of this pleading. The plaintiff's application for a stay of the auction lacks merit and is hereby denied.

It is so oredered.

s/Todd Campbell
United STates District Judge

APPENDIX C

In the Chancery and Circuit Courts of Lawrence County, Tennessee.

Dora Lee Hulen and Wilma Lesnansky v Earlene Polyak Chancery No. 7951-96, and Circuit Court No. CC: No. 452-98(Probate No. 10496).

Dismissed: Counterclaim No. 7951-96.

Issued: Judgment on the Pleadings No. 7951-96.

Issued: Order for Sale No. 7951-96.

Judge. The Honorable Jim T. Hamilton.

In the Court of Appeals of Tennessee Appeal No. 01A01-9803-CH-00133(Consolidated Appeal No. 7951-7736-95).

Reversed and Remanded: April 30,1999. Presiding Judge: Ben H. Cantrell and Judges William C. Koch, Jr. and Patricia J. Cottrell.

IN THE CHANCERY COURT FOR LAWRENCE COUNTY, TENNESSEE, AT LAWRENCEBURG

DORA LEE HULEN and
WILMA LESNANSKY

Plaintiffs

vs

EARLENE POLYAK

Defendant

FILED FEB 10 1998

No. 7951-96

ORDER DISMISSING COUNTERCLAIM

This cause came on for hearing upon the Motion to dismiss the Defendant's Counterclaim for failure to state a claim upon which relief can be granted, and the Court finds that said Counterc im should be dismissed for failure to state a claim upon which relief can be granted.

It is therefore ordered that the Defendant's counterclaim is dismissed with prejudice.

Dated this 10th day of FEB 1998.

s/ Jim T. Hamilton

APPROVED FOR ENTRY:
s/Dalton M. Mounger
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I Dalton M. Mounger hereby certify that I have this 10 day of February 1998, mailed a copy of the foregoing Order Dismissing Counter claim to:

Earlene Polyak
3179 Middlefield Drive
Trenton, michigan 48183

s/Dalton M Mounger

PUBLISHER'S NOTE :

ORIGINAL PAGINATION IS NOT CONTINUOUS.

IN THE CHANCERY COURT FOR LAWRENCE COUNTY, TENNESSEE, AT LAWRENCEBURG

DORA LEE HULEN and
WILMA LESNANSKY

Plaintiff

v

EARLENE POLYAK

Defendant

FILED FEB 10 1998

NO. 7951-96

JUDGMENT ON THE PLEADINGS

This cause came on for hearing upon the Motion of the Plaintiffs, and the Court finds that the Defendant has asserted no viable defense to the Complaint. Therefore, judgment is rendered in favor of the Plaintiffs, and the Clerk and Master is appointed Special Commissioner to sell the property described in the complaint.

Dated 10th day of Feb. 1998.

s/Jim T. Hamilton

APPROVED FOR ENTRY:
s/Dalton M. Mounger
Attorney for Plaintiffs

I Dalton Mounger certify that on the 10th February, 1998 mailed a copy of foregoing to: Earlene Polyak, 3179, Middlefield Dr.Trenton, Michigan 48183.

s/Dalton M. Mounger

IN THE CHANCERY COURT FOR LAWRENCE COUNTY,
TENNESSEE, AT LAWRENCEBURG

DORA LEE HULEN and
WILMA LESNANSKY

FILED FEB 11 1998

Plaintiff

v

No. 7951-96

EARLENE POLYAK

Defendant

ORDER FOR SALE

The Clerk and Master is ordered to sell the land described in the Complaint at public sale pursuant to the provision of Tennessee Code Annonated 35-5-101 et seq., the Clerk and Master is specifically authorized to secure the services of an auctioneer licensed in this state to conduct such public sale; and the expenses of the sale and the auctioneer shall be paid from the proceeds of the sale.

Dated this 11th day of February, 1998.

s/Jim T Hamilton
Judge Jim T Hamilton

APPROVED FOR ENTRY:
s/Dalton M. Mounger
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, Dalton Mounger, hereby certify that I have this day of February 1998, mailed a copy of the foregoing order for sale to:

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE AT LAWRENCEBURG

IN THE MATTER OF:

FILED FEB 10 1998

THE ESTATE OF FRANK HULEN DECEASED

CC: 452-98

ORDER

This cause cameon for hearing upon the claim against the Estate of Frank Hulen filed by Earlene Polyak: the exceptions by the Executrix the claim: the response to the exception by Mrs Polyak; and Mrs Polyak's demand for a jury trial.Based upon the pleadings, the arguments of counsel and the entire record as a whole, the Court finds as follows:

1. Ms. Polyak did not comply with the reauirements of Tennessee Code ammonated 30-2-313(d) in her jury trial demand since it was not filed until more than five (5) days after her receipt of the notice of diling of the Executrix's exceptions.

2. A significant portion of Mrs. Polyak's claim is barred by the doctrine ot res judicata in that has already litigated these issues with Frank Hulen as evidenced by the Court's order

in cause No. 7736-95 in Chancery Court of Lawrence County, Tennessee.

It is therefore ordered adjudicated and decreed that Mrs. Polyak's demand for a jury trial is dismissed and Mrs. Polyak's claim is dismissed.

Dated this 10th day of Feb. 1998.

s/Jim Hamilton

Approved for Entry

s/Dalton Mounger

KENNETH WEATHERS
Lawrence County Clerk
Lawrence county Courthouse
204 West Gaines NBU
Lawrenceburg, Tennessee 38464

No. 10496
January 29, 1998

PLEASE TAKE NOTICE

IN RE: THE ESTATE OF FRANK HULEN

This 29th day of January, 1998, Kenneth Weathers,Clerk of the Probate Court of Lawrence County, certify that the Claim, Exception to Claim and Response and Request for hearing in regards ro the Frank Hulen Estate has been transferred to the Circuit Court of lawrence County.

s/\ Kenneth Weathers
Probate Court Clerk

s/Gerald Wilson
Circuit Court Clerk

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE AT LAWRENCEBURG

FRANK HULEN AND
WILMA LESNANSKY

FILED DEC 20, 1983

Plaintiffs

v

No. 1974

EARLENE POLYAK

JUDGMENT

This cause came on to be heard on the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge, upon this day filed by the defendant,personallyand in her own behalf, statement and argument by the defendant Earlene Polyak, in her own behalf, from all of which the Court finds no merit,and said motion is here and now overruled in its entirety'

s/ Jim T. Hamilton
CIRCUIT COURT JUDGE

Charles Holt, Boston
Bates and Holt certifies
that exact copy served on
Earlene Polyak 3179 Middlefield
Drive, Trenton, Michigan 48183
on December 20, 1983.

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

DORA LEE HULEN AND
WILMA LESNANSKY

JURY TRIAL DEMAND

Plaintiff

No. 7951-96

EARLENE POLYAK /

EARLENE POLYAK

Counter-Plaintiff

v

FRANK HULEN ESTATE, DORA
LEE HULEN AND WILMA
LESNANSKY /

REQUEST TO RECUSE

Counter-Plaintiff, reqsuests that the Honorable Jim Hamilton recuse from the above and all cases regarding her in this or any Court System.This request is grounded is grounded in experience in which Judge Hamilton has never granted a motion, petition or order in which she has requested relief from the Court and Judge Hamilton takes petitions addressed to other Judges and denies relief requested from the Court.

In view of the above, Plaintiff believes that the Judge perjudiced to her, personally

dislikes her, too biased to local persons to invoke justice in this Court for her relief.

I certify that a true copy of this request has been mailed to Dalton Mounger, 806A South Garden Street, P.O. Box 1468, Columbia, Tennessee 38402 on the 4th day of June,1996.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(373) 676-3364

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

EARLENE POLYAK

Plaintiff/Appellant

FILED APR 30 1999

vs

DORA LEE HULEN AND
WILMA LESNANSKY

Defendant/
Appellees

Appeal No.

01A01-9803-CH-00133

Lawrence Chancery
No. 7951-96 &7736-95

THE HONORABLE JIM
HAMILTON, JUDGE

REVERSED AND REMANDED

This family dispute over partition of forty-two acre farm is well into its third decade. The Chancery Court of lawrence County granted judgment on the pleadings and ordered the property sold for partition. We reverse and remand for further proceedings.

1.

Rena Hulen, the owner of the farm died in 1976. She left her property in equal shares to her three children, Earlene Polyak, Frank Hulen and Wilma Lesnansky. The farm contained a small house and a barn.

In 1983 Mr. Hulen and Mrs Lesnansky

a complaint in the Chancery Court of Lawrence County asking that the farm be sold for partition. Ms. Polyak's defense has always been that she would get the house and approximately ten acres on the front, Ms Lesnansky would get a site for her son to build a house to the north of the farmhouse, and Mr. Hulen would get some property on the back next to his own farm. Apparently Ms. Polyak lost the battle(the order from the case is not in the record), and she set out on a journey through the federal courts, seeking to enjoin the sale of the property and to recover damages for a host of civil rights violations. The course of this journey is described in part in an order from the Sixth Circuit Court of Appeals filed on August 13, 1993:

> This case and eight others presently before the court(92-6345/6525;6526; 6527; 6529, and 6530) had their orgin in 1976 ehrn Mrs Polyak and her two siblings inherited from their mother a family farm in Lawrence County, Tennessee, as tenants in common. Mrs Polyak 's siblings sought and obtained a partition sale of the property.

Failing to prevail in state court

litigation, Mrs Polyak began her assult on the partition sale in federal court in 1985. She sought monetary damages and an order setting aside the partition sale. The defendant have stopped filing briefs in response.

Mrs Polyak is appealing from the order entered by the district court on October 6, 1992, in which the Court held that it would not consider any further submissions by Mrs Polyak to relitigate any issue regarding the parties or the property involved in the partition sale.

in December 1995, Mrs Polyak filed a in the Chancery Court of lawrence County against Ms. Lesnansky and Mr. Hulen. The basis for the complaint was the settlement agreement of the parties in 1976. The complaint went on to describe expesnseMs. Polyak had incurred in working on the house, how her appeal of the order of sale was inadvertently lost, how the burley tobacco allotment was transferred to another farm, and how the whole ordeal had caused her stress anxiety and embarassement. She prayed for $250,000 in compensatory damage $250,000 in punitive damages, and a deed to the house and ten(10) acres.

In February of 1996, Mr. Hulen and Mrs

In February of 1996, Mr. Hulen and Ms Lesnansky, acting pro se, moved to dismiss the complaint under Rule 12.06 Tenn R.Civ.Pro for failure to state a claim. The Court entered an order on February 21, 1996 containing the following findings.

> It appearsto the Court that the plaintiff will pursue any means to relitigate the previous and related issues that were involved or which arose out of the same lawsuit already adjudicated in this Court, including,in this instance attemp ting bring in as defendants the plaintiffs in the original lawsuit in which the plaintiff herein was a defendant. That lawsuit was filed in the chancery Court of lawrence County, Tennessee, bearing action Action No. 1974.The Court takes judicial notice from the public record that plaintiff herein has already litigated this dispute with the defendan named herein, in this and several other courts, and the avernments therein appear to be largely the same as in this case. The original case was appealed to the Tennessee court of Appeals and to the Tennessee Supreme Court.As mentioned,the dispute has also been filed by plaintiff in numerous courts across the United States of America and has even been pursued to the Supreme Court of the United States. It appears from the record,the Court's judicial notice of prior matters of public record, and defendant's motion plaintiff's action is frivolous,filed in bad faith, vexatious and otherwise should be dismissed, fails to state a claim upon which relief can be granted and is

barred.

> The Court therefore, on Defendant's motion, and sua sponte, dismisses this lawsuit filed by the plaintiff, Earlene Polyak, against defendants, Frank Hulen and Wilma Lesnansky.Court costs are taxed to the plaintiff.

In May 1996 Ms. Lesnansky and Dora lee Hulen filed a complaint in the Chancery Court of Lawrence County seeking a sale of the farm for partition. The complaint alleged that Frank Hulen died on April 11, 1996 and that Dora Lee Hulen was sole beneficiary under his will.

Ms. Polyak filed an answer and counter-claim containing the same allegations she pressed in the complaint just recently dismissed.She then filed a notice of removal in the Columbia Division of the United States District Court. The district court remanded the state claims to the chancery court after dismissing the federal claims in the counter-claim.

In meantime, Ms Hulen and Ms. Lesnansky had moved to dismiss counterclaim for failing

had moved to dismiss the counterclaim for failing to state a claim on which relief could be granted. They also moved for judgment on the pleadings. On February 13, 1998, the Chancellor entered an order dismissing the counterclaim and another order granting judgment on the pleadings. The next day the chancellor entered an order ordering the clerk and master to sell the property described in the complaint.

The two cases have been consolidated on appeal. Both cases were disposed of on motions to dismiss,either for failure to state a claim under Rule 12.02(6),Tenn.R.Civ. Proc. or for judgment on the pleadings under Rule 12.03. Our problem stems from the fact that the chancellor sustained both motions on the ground of res judicata, but the record on appeal does not contain the support for that ruling. In fact, the defense of res judicata has not even been raised in either proceeding.

As we said in Gregory v Gregory, 803 S.W. 2d 242(Tenn. App. 1990), the defense must be

and the party raising the defense must prove it. To carry the burden, the party raising the defense must generally put in evidence the record or a copy of the record on a former case....if the record does not conclusively show that a paticular matter was determined in a former pleading, the party relying on res judicata as a defense must supplement the record by other proof."Id at 244.

We have also searched the record of this Court for evidence on which we could base a decision, but we have only found evidence that Mrs. Polyak attempted to appeal a 1983 decision and the appeal was dismissed for lack of a final judgment.Therefore, on the basis of what we have before us, we cannot sustain a judgment on the pleadings or a judgment of dismissal for failure to state a claim. On remand the appellees may be able establish a record showing they ar entitled to relief sought.

The judgments entered in the two cases

from the lower court are reversed and the causes are remanded to the Chancery Court of Lawrence County for further proceedings. Tax the costs on appeal to the appellees.

s/Ben H. Cantrell
BEN H. CANTRELL,
PRESIDING JUDGE M.S.

CONCUR:

s/William C. Kotch JR.
WILLIAM C. KOTCH, JR., JUDGE

s/ Patricia J. Cottrell
PATRICIA J. COTTRELL, JUDGE

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON,D.C. 20543-00001

April 21, 1999

Ms Earlene Polyak
145 Lakeside Drive
Jupiter, FL 33458

Re: Earlene Polyak
v Charles Burson
Application No-871

Dear Ms. Polyak:

The application for extension of time within which to file a petition for writ of certiorari in the above-entitled case has been presented to Justice Stevens Stevens, who on April 21, 1999, extended the time to and including August 2,1999.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER
s/Sandra Elliot Spagnolo
Assistant Clerk